WILLS BILL.

Mr. Krishnaswamy Rao.—I beg to move that the Wills Bill, as amended by the Select Committee, be taken into consideration. It is to be regretted that Mr. Ramanatha Rao was not able to agree with his three colleagues in the Select Committee on two points, viz. the appointment of guardians by will and the testamentary powers of Hindus. The Government referred the Bill as settled by the majority of the Select Committee to the High Court for their opinion. As I was a member of the Select Committee I did not take part in the deliberations of the High Court. The three Judges of the High Court, Messrs. Kunhi Ramen Nair, Cosby, and Govinda Pillai, have favoured us with their views on the Bill. They not only agree with the majority of the Select Committee on the points on which Mr. Ramanatha Rao has recorded a dissent, but recommend that the range of relations as against whom more than one-half of the property should not be devised by a Marumakkathayam Hindu should be extended. The Council will have an opportunity of considering this recommendation of the learned Judges when the amendments of which the Raja of Perapanad has given notice, are moved.

On reading the opinions of my colleagues in the High Court I have come to the conclusion that we should provide facilities for the grant of probates to those who *may* wish to obtain one to enable them to administer the estate properly. The question is whether the provisions relating to probates should be introduced into the present Bill, or form the subject of a fresh legislation on the lines of the Indian Probate Act (V of 1881) which contains 156 sections. I prefer the latter course for these reasons:—(1) The introduction into this Bill of the elaborate provisions relating to the grant of probates would necessitate the referring back of this Bill to the Select Committee: (2) This Bill lays down the substantive law on the subject of wills, while the grant of probates belongs to the law of procedure: (3) It is convenient to keep these two subjects separate. In fact, in British India there is a separate Probate Act (V of 1881) which does not deal with the *extent* of testamentary powers of any community.

I will now proceed to offer a few observations on the several suggestions made by my learned colleagues in the High Court. Messrs. Justices Kunhi Ramen Nair and Govinda Pillai suggest the introduction of the word "declare" in the Preamble with the object of giving legal effect to wills made by Hindus in Travancore before this Bill becomes law. I think that we cannot accept this suggestion for the simple reason that this Bill which, it should be remembered, confers a *limited* testamentary power on Hindus, could not be applied to wills made before it becomes law. The Madras precedent is not applicable, as the local High Court by a majority ruled that the law now in force here did not recognize Hindu wills. Mr. Justice Kunhi Ramen Nair recommends the restoration of section 2 of the Bill and of certain phrases in the Preamble. The object aimed at by the learned Judge is secured by the other provisions of the Bill as pointed out by Mr. Justice Govinda Pillai in his minute.

With reference to Mr. Justice Cosby's suggestion that wills should not be brought under compulsory registration nor their deposit in registration offices be insisted upon, I reserve my remarks to a later stage of the proceedings when, in connection with one of the amendments to be moved by the Raja of Perapanad, the Council will have to consider this point.

Messrs. Justices Kunhi Ramen Nair and Cosby take exception to section 11 on the ground that the testator may simply call for the deposited will for reference without intending to revoke it. No testator will, as a rule, be without a copy of the will he has made. For mere reference, he may not find it necessary to call for it. If he calls for it with the intention of making any alteration, he must be taken to mean to revoke it in its existing form. In the case of a deposited will no other form of revocation than taking it from the registration office seems effective. The power which the testator has of either substituting another will in lieu of the one recalled or modifying the will by a codicil is in my opinion sufficient to remove the hardships pointed out. It is the duty of a testator to see that his intentions are clearly expressed and to remove all causes for doubt. I think that, on the whole, section 11 has laid down a safe rule.

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With reference to the observations of Mr. Justice Govinda Pillai on the operation of section 15, I have simply to say that the Select Committee never meant to apply the Regulation to movable property out of Travancore. I reserve my remarks on the observations of Mr. Justice Cosby on this section to a later stage of the proceedings; for if on the motion of the Rajah of Perpanad section 8 be omitted I could not defend the retention of section 15 in its *present form*. With these observations, I move that the Council do take this Bill into consideration.

On Mr. Prince moving that the Bill be referred to a Select Committee for reconsideration, Mr. Krishnaswamy Row observed.—I think it necessary to offer a few explanatory remarks on section 8 in order to remove the impression that the proposed Legislation for the grant of Probate of Wills will do away with the necessity of either registering a will or depositing it in a registration office. To prevent forgery in whole or part, and in some cases *destruction* of wills, I think it is absolutely necessary that they should be either registered or deposited. The genuineness of a registered or deposited will will not be disputed as easily as that of an unregistered one. This circumstance will save the probate court, the duty of enquiring into the genuineness of wills in 90 per cent of cases coming before it. Is this not a great public advantage? As to the alleged double expense, this will occur only in those few cases in which a probate of a will is sought. From my experience in the Madras Presidency, I can assure the Council that in the case of a very large majority of wills made by *Natives* no probate is sought for, especially where the genuineness of the will is not open to contention. I need not repeat that registration or deposit of wills will be a most effective check on the propensity to dispute their genuineness. The expense of registration or deposit of a will would be a trifle compared with the heavy costs of proving by witnesses in the probate court a disputed will. Messrs. Justices Kunhi Ramen Nair and Govinda Pillai who recommend the introduction of provisions relating to probates, fully approve of the provisions of section 8. A will not registered or deposited holds out a strong temptation to tamper with it in a thousand ways *in the interval* that must elapse between the testator's death and the date of the application for grant of a probate. Even a compulsory law requiring every will to be probated will not so effectually check frauds in connection with wills as its registration or deposit will do. The object of the proposed probate legislation will be to grant facilities for carrying out the intentions of the testator as expressed in his will, under the directions of a Court of law, without a resort to the ordinary procedure of a suit in cases where the parties interested may seek the aid of a Court. For these reasons, I think that the proposed legislation for the grant of probate does not affect the principle on which section 8 rests and that a second reference of the present Bill to the Select Committee (if there is to be a separate legislation for probates) is unnecessary.

After some further discussion, Mr. Prince withdrew his motion and it was resolved that the consideration of the Bill be deferred to the next meeting.

SHUNGRASOOBYER
President.

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